

MARYLAND OFFICE OF THE PUBLIC DEFENDER  
TESTIMONY & RESPONSE TO BUDGET ANALYSIS

FISCAL 2007

To the

PUBLIC SAFETY & ADMINISTRATION SUBCOMMITTEE OF THE HOUSE  
APPROPRIATIONS COMMITTEE

March 2, 2006

## I. The Caseloads Initiative Is a Success.

Four years ago, this committee made a commitment to the OPD and a demand of the OPD

- Bring Caseloads Into Compliance with ABA Standards
- Develop Caseloads Standards that are for Maryland cases and reflect Maryland practice
- Install accurate data collection for case counting to measure caseloads

The Office of the Public Defender can report at these budget hearings that your mandate has been fulfilled. Thank you for your unwavering leadership and support. If the budget committees had not repeatedly called for adequate funding and staffing at OPD, we would not be here today to report success. If this budget is approved as proposed, fiscal 2007 will mark the completion of the Caseloads Initiative, each of its three components, on time and on budget.

The attached charts demonstrate that with the final 22 new attorney positions in this budget, caseloads statewide in all areas of practice will be in compliance with American Bar Association Standards.

Installation of our data collection system with our case management system was completed in fiscal 2005, 52 offices statewide were brought on line finally, with case tracking, email, and office intranet capacity. With December 31<sup>st</sup>, we have completed a full year of uniform data collection.

The final task from this committee to OPD was to ensure that this never happened again. To develop meaningful caseload standards with accurate data collection that will ensure that OPD budgets keep up with OPD workload; that will allow this committee to determine whether our annual budget allowance is sufficient to meet operating demands and will allow this committee to review OPD use of the resources this committee appropriates to our budget.

NCSC briefed this committee on the study and the proposed caseloads in October. With your support, we will incorporate these standards into our Managing For Results program, substituting these better tailored standards for the ABA standards we have been using and will base future budget requests upon them.

We concur in the recommendation to include budget bill language to incorporate these standards in MFR.

## II. Response to Analysis

### **A. Caseload Standards and MFR.**

#### **Budget bill language directing OPD to incorporate NSCS recommended caseloads into MFR and other operations.**

We concur in this recommendation. Incorporating the proposed caseload standards as directed will fulfill the recommendations of the 2001 Performance Audit and this committee to adopt meaningful: objective, accurate and relevant workload standards for Maryland attorneys.

### **B. Caseload Report in November.**

#### **OPD should report in November 2006 on the status of attorney caseloads under the new Maryland caseload standards.**

We would be delighted to provide a report on attorney caseloads under the new standards and welcome this committee's continued interest in this issue.

### **C. Panel Attorney fees**

#### **OPD should comment on the status of the statewide panel list and implications of the \$50 per hour increase.**

*Background.* As accurately noted in the budget analysis, the OPD maintains a statewide list of reliable, competent panel attorneys willing to represent indigent defendants and accept cases from the OPD. Several years ago, this list started shrinking. Eventually, so many panel attorneys had left the list, that the list was outdated and inaccurate and was no longer used to locate panel attorneys when they were needed. Instead, each of our 15 District Public Defender and Division Chiefs relied upon their own personal contact lists to locate panel attorneys and finally, even those attorneys were often unwilling or unable to accept OPD cases. In some counties, we had no panel attorneys in the jurisdiction, especially for serious felonies like homicide cases. When we attempted to update the statewide list in fiscal 2002, we were unable to compile a list of more than 40 attorneys statewide. Our districts continued to report serious difficulty finding panel attorneys, trial judges were lodging an increasing number of complaints about the quality of panel attorneys and delays associated with attempting to locate panel attorneys, and we were uncovering increasingly serious problems associated with declining availability and quality of panel attorneys.

We recruited a committee of OPD management, private bar and panel attorney members to investigate the causes and remedies of the panel attorney crisis and recommend ways to recruit panel attorneys and ensure effective assistance of counsel by panel attorneys. That committee found that a panel rate that had not changed in almost twenty years, that did not cover case costs or office overhead costs and that lagged far behind the federal standards made it impossible for attorneys to accept OPD cases without losing money. It rendered the agency so in need of panel attorneys that the agency lacked no means to ensure quality and training. The committee also found Maryland had one of the lowest rates in the country and ranked last among the six most

comparable states. Finally, the committee noted that the law requires that panel rates must at least pay the cost of office overhead, case costs and a reasonable fee for work performed in order to comply with the Constitution. To this end the committee unanimously recommended an immediate increase in panel rates to \$50 per hour, followed by incremental increases annually until Maryland rates complied with federal standards. The \$50 per hour rate went into effect in fiscal 2006. The regulations call for a rate of \$75 per hour in fiscal 2007 and \$90 per hour in fiscal 2008. Funding remains at \$50 per hour in the fiscal 2007 allowance.

*Future Impact of \$50 per Hour Rate.* The \$50 per hour rate has stopped the drain of panel attorneys from the agency. We now have at least one panel attorney in each district, though finding panel attorneys to handle serious felony cases remains a serious problem on the Lower Shore and in Southern Maryland. We are making another effort to rebuild the statewide list now that the new rate has been in effect for a year. However, the \$50 per hour rate was meant as an interim provision, a first step to providing adequate compensation to panel attorneys. Panel attorneys submitted hundreds of letters in support of the rate increase to comply with the federal standards, noting that even \$50 per hour does not cover the cost of office overhead for most practitioners, much less provide a reasonable fee for work performed. These attorneys report that they have come back to accepting OPD cases in anticipation of the full rate increase because the OPD and the State have made a good faith first step with the \$50 per hour increase. Note that Maryland panel rates, even at the \$50 per hour rate, remain among the lowest in the country because other states are also increasing panel rates. Massachusetts recently increased their rates to \$100 in serious felonies, in response to litigation. Without continued progress on rate increases in future years, we are unlikely to sustain the progress we have made in rebuilding our statewide panel list.

#### **D. Panel Attorney Fees-Report**

**OPD should submit a report on the status of the statewide list with measurable outcomes.**

We concur in this recommendation. We appreciate the committee's interest in this very important issue and look forward to providing a report on it in November 2006.

#### **E. Fiscal 2005 Close Out Audit**

**OPD should comment on why the agency overspent its fiscal 2005 appropriation.**

As the members of this committee know, while this committee was approving funding of the caseloads initiative through the front door, over \$5.4 million in cost containment budget reductions were leaving the agency through the back door. Some of these were unfunded increases in expenditures like health care and other payroll increases; some were across the board reductions to our base operating budget during the 6-12% cuts shared by all Executive branch agencies.

This committee and DLS accurately predicted last year that our fiscal 2006 appropriation was under-funded due to these cost containment measures and you were

right. We can no longer absorb these reductions. The Governor has righted the problem in the fiscal 2007 allowance. This deficiency appropriation will see us through the fiscal year.

However, the committees noted during budget hearings last year that cost-containment had resulted in troubling under-funding of the base operating budget. Because nearly 90% of the agency's operating budget is personnel, the agency could not absorb all of the cost containment reductions, resulting in a shortfall in fiscal 2005 that has been carried over into fiscal 2006. The fiscal 2006 deficiency projection includes these expenses. The fiscal 2005 carry-over of expenses was completed in compliance with all General Accepted Accounting Procedures (GAAP) and other applicable state laws. If funded as recommended by DLS, this shortfall is addressed by the fiscal 2006 deficiency allowance.

### III. Conclusion

This final issue should not detract from the success we want to share with this committee. With this appropriation, the Caseloads Initiative will be a complete success in all respects, due to your leadership and unwavering support. Thank you.